

# Employment

## JSEC NEWS

**The  
More  
You  
Know**

### FREQUENTLY ASKED EMPLOYMENT QUESTIONS

#### What is minimum wage?

It is currently \$5.15 per hour (was effective September 1, 1977). A business not covered by the Fair Labor Standards Act whose gross annual sales are \$110,000 or less may pay \$4 per hour. HOWEVER, if an individual employee of such a business is producing or moving goods between states or is otherwise covered by the Fair Labor Standards Act that employee must be paid federal minimum wage (currently \$5.15 ph). Although there are some exemptions, most workers, must be paid the minimum wage for all "hours worked" as required by state law. "Hours worked" includes preparation time, opening and closing the business, company travel, and required meeting and training. Any time spent by an employee in the performance of these duties must be recorded and paid. Employers may not use tips as credit toward wages rates, including minimum wage, to an employee. There is no training wage in Montana.

#### What are the rest break and meal period requirements?

There is no state or federal law that requires an employer to give a break (rest periods or coffee breaks) or a meal period. This is a benefit that the employer may choose to provide. However, if a break is offered, the break time is considered as paid time. In the case of meal periods, they are not considered paid time if the meal period is half an hour or longer and the employee is completely relieved from duty.

#### Do I need a probationary period?

If an employer does not establish a specific probationary period, or provided that there is no probationary period prior to or at the time of hire, there is a probationary period of 6 months from the date of hire. While this law implies that you can terminate a probationary employee for "any reason or no reason", you cannot do so in violation of your written personnel policies or in violation of other laws.

#### Can I establish dress code?

Employers can set reasonable standards for dress and grooming for their employees as long as they are nondiscriminatory and are applied consistently to similarly situated employees and that any differences do not impact job opportunities based on protected areas of the law which include race, color, national origin, creed, sex, physical or mental disability, marital status, religion or age. An employer should be able to show that a particular rule is a business necessity. You may contact Job Service for an example of a dress code policy.

#### Can I refuse to hire a smoker?

An employer has a right to enforce a no-smoking rule on their premises but according to Montana Code Annotated 39-2-313, they cannot refuse to hire or fire an employee because the employee engages in the use of a legalized substance, such as tobacco or alcohol on their own time. In your job posting, you cannot say the person has to be a non-smoker, just that it's a non-smoking environment.

**I need to hire an employee and how do I know what to pay?**

Be competitive and do your homework regarding the pay! Check with the local Job Service Workforce Center to see what the occupation pays in the area. You could also check on the Research and Analysis Website, <http://rad.dli.state.mt.us/> or you may check on [www.acinet.org](http://www.acinet.org) and click on Wages and Trends. You may compare wages in different geographical areas in Montana or any state.

**What posters do I need in my business?**

There are 5 federal mandatory posters needed and they are Equal Employment Opportunity, Family Medical Leave Act (employers with 50 or more employees in a 75-mile radius), Federal Minimum Wage, Job Safety and Health (OSHA), and Polygraph (does not apply to public employers). In addition to these federal posters, you are required to post proof of Worker's Compensation and Unemployment Insurance coverage. You may contact the Lake County Job Service Workforce Center, 883-7880 for a free 5-in-1 mandatory poster!

**Can I deduct from wages the amount of damages caused by the employee?**

No, wages cannot be withheld for shortages, damages, or mistakes.

**Can I require my food servers to pool their tips and disburse these tips among all my employees?**

No, tips belong to the employees who provide the service and any tip pool agreements should be arranged only by the employees to whom the tips belong.

**Is it true that since I pay my employees on a salary basis, I don't need to be concerned about overtime?**

Paying employees on a salary basis is only one of many methods of payment. You still must pay overtime for all hours worked over 40 in a workweek UNLESS the employee specifically meets an exemption from the overtime provision of Montana statutes. For these exemptions, may contact Wage and Hour Unit, (406) 444-5600, or your local Job Service Workforce Center.

**Can I hire 14 and 15 year-olds during the school year?**

Yes, as long as the specific employment duties are not prohibited and you adhere to the allowed hours of work. Contact the Wage and Hour Unit, (406-444-5600) or your local Job Service Workforce Center, 883-7880 for a complete guide.

**If an employee actually works 40 hours during the work week and I also pay him 8-hours of holiday pay, do I need to pay time and a half for 8 of these hours?**

No, wage and hour laws do not require that holiday pay, sick leave, or vacation hours be counted toward the 40 hours actually worked.

**What is an Independent Contractor?**

According to the law, "independent contractor" means a person who renders service in the course of an occupation and (a) has been and will continue to be free from control and direction over the performance of the services both under the contract and in fact and (b) is engaged in an independently established trade, occupation, profession, or business. In other words, one whose work is not controlled by others and is engaged in his/her own trade, occupation, profession, or business. Independent Contractors Unit Phone #—(406) 444-1446

**Can I require my employees to report to work and wait around to see if we are busy enough to need their services?**

Yes but time spent waiting is hours worked.

**NEW RESOURCE for EMPLOYERS**

PROVEIT Software - Online testing software program that can assess a full range of skills. There are hundreds of tests for clerical, software, industrial, healthcare, financial and technical job classifications. Over 700 validated assessments! Call Job Service for more details—883-7880!

**2003 Wage and Hour Legislative Changes****Minimum Wage and Overtime Exemption**

- Exempts employees from the law if providing respite care to the aged or infirm, and are employed by the family or legal guardian of the recipient of the services. Effective March 19, 2003. This will be found in 39-3-406(l)(p), MCA and will read as follows:

“An employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.”

**WAGE PAYMENT ACT**

- Cleaned up some archaic language to the law and provides an employer to pay an employee on the next pay period in the event the employee fails to submit their time card by the requested time of the employer. Effective date is April 14, 2003. The actual statute will read as follows:

39-3-204. Payment of wages generally. (1) Except as provided in subsection (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the U.S. or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from an employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable. However, reasonable deductions may be made for board, room, or other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or other deductions provided for by law. (2) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages. (3) If an employee submits a timesheet after the employer's established deadline for processing employee timesheets for a particular time period and the employer does not pay the employee within the 10-day period provided for in subsection (1), employer may pay the employee the wages due in the ensuing pay period. An employer may not withhold payment of the employee's wages beyond the next ensuing pay period. If there is not an established time period or time when wages are due and payable, the pay period is presumed to be semi-monthly in length.



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### **FREE 5-IN-1 MANDATORY POSTERS**

If you are unsure what posters you need to post in your business, the following federal posters are required:

- Equal Employment Opportunity
- Family Medical Leave Act (Employers with 50 or more employees in a 75-mile radius)
- Federal Minimum Wage (must be displayed on an employee bulletin board)
- Job Safety and Health (OSHA)
- Polygraph (does not apply to public employers)

In addition to the above-mentioned federal posters, employers are required to post proof of Unemployment Insurance coverage and Workers' Compensation coverage. You receive posting notices when you submit the paperwork for Unemployment Insurance and Workers' Compensation coverage.

If you would like a **free** copy of the new 5-in-1 mandatory poster, please contact June Littlefield, Business Advocate, Lake County Job Service Workforce Center, 883-7883.

### Other Newsletters

#### Volume 1

Child Labor Laws/  
Job Application Inquiries

#### Volume 2

Employment Retention/Tips on Providing  
& Checking References

#### Volume 3

Job Descriptions

#### Volume 4

Performance Appraisals

#### Volume 5

Navigating the Job Service Website

#### Volume 6

Lake County Job Service Resources

#### Volume 7

Military Reemployment Rights

May download at:

[www.employlakecounty.com](http://www.employlakecounty.com)

Or call June Littlefield 883-7883

